

Ben F. Pierce Gore (SBN 128515)  
PRATT & ASSOCIATES  
1871 The Alameda, Suite 425  
San Jose, CA 95126  
Telephone: (408) 429-6506  
Fax: (408) 369-0752  
pgore@prattattorneys.com

*Attorney for Plaintiff*

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION

CHAD BRAZIL, individually and on behalf of  
all others similarly situated,

Plaintiff,

v.

DOLE FOOD COMPANY, LLC;  
DOLE PACKAGED FOODS, LLC,

Defendants.

Case No. 12-cv-01831 (LHK)

**PLAINTIFF'S STATEMENT OF  
RECENT DECISION**

Hearing Date: December 6, 2012  
Time: 1:30 p.m.  
Judge: Hon. Lucy H. Koh  
Action Filed: April 11, 2012

Plaintiff, through the undersigned counsel, submits this Statement of Recent Decision under Local Rule 7-3(d)(2).

Attached hereto as **Exhibit A** is a true and correct copy of a decision from the United States District Court for the Northern District of California, dated November 9, 2012, entitled *Khasin v. The Hershey Company*, Case No. 5:12-CV-01862-EJD ("*Khasin v. Hershey*").

Under Local Rule 7-3(d)(2), *Khasin v. Hershey* is a relevant judicial opinion published after Plaintiff filed his Memorandum of Points and Authorities in Opposition to Defendants' Motion to Dismiss on August 31, 2012.

In *Khasin v. Hershey*, on November 9, 2012, the court granted in part and denied in part the defendant's motion to dismiss and denied the defendant's motion to strike. Judge Edward J.

1 Davila denied defendant's motion to dismiss on all claims, except plaintiff's Magnuson-Moss  
 2 Warranty Act and California Song-Beverly Consumer Warranty Act claims. Judge Davila also  
 3 denied the defendant's motion to strike "all claims predicated on statements that Plaintiff did not  
 4 see and that concern products that Plaintiff did not purchase." The court denied defendant's  
 5 motion to strike "in that regard as any concerns about the differences among the products are  
 6 better addressed at the class certification stage, rather than the present [motion to dismiss] stage."

7 Dated: November 12, 2012.

8 Respectfully submitted,

9 /s/ Charles Barrett

10 Charles Barrett (*admitted pro hac vice*)  
 11 CHARLES BARRETT, P.C.  
 12 6518 Hwy. 100, Suite 210  
 13 Nashville, TN 37205  
 Telephone: (615) 515-3393  
 Fax: (615) 515-3395  
[charles@cfbfirm.com](mailto:charles@cfbfirm.com)

14 Ben F. Pierce Gore (SBN 128515)  
 15 PRATT & ASSOCIATES  
 16 1871 The Alameda, Suite 425  
 San Jose, CA 95126  
 Telephone: (408) 429-6506  
 Fax: (408) 369-0752  
[pgore@prattattorneys.com](mailto:pgore@prattattorneys.com)

18 Jay Nelkin  
 19 Carol Nelkin  
 Stuart M. Nelkin  
 20 NELKIN & NELKIN, P.C.  
 5417 Chaucer Drive  
 P.O. Box 25303  
 Houston, Texas 77005  
 Telephone: (713) 526-4500  
 Facsimile: (713) 526-8915  
[jnelkin@nelkinpc.com](mailto:jnelkin@nelkinpc.com)  
[cnelkin@nelkinp.com](mailto:cnelkin@nelkinp.com)  
[snelkin@nelkinpc.com](mailto:snelkin@nelkinpc.com)

24 Don Barrett  
 25 David McMullan, Jr.  
 26 Brian Herrington  
 Katherine B. Riley  
 27 BARRETT LAW GROUP, P.A.  
 P.O. Box 927  
 404 Court Square North  
 28 Lexington, MS 39095

1 Telephone: (662) 834-2488  
2 Toll Free: (877) 816-4443  
3 Fax: (662) 834-2628  
4 [dbarrett@barrettlawgroup.com](mailto:dbarrett@barrettlawgroup.com)  
5 [donbarrett@gmail.com](mailto:donbarrett@gmail.com)  
6 [bherrington@barrettlawgroup.com](mailto:bherrington@barrettlawgroup.com)  
7 [kbriley@barrettlawgroup.com](mailto:kbriley@barrettlawgroup.com)  
8 [dcmullan@barrettlawgroup.com](mailto:dcmullan@barrettlawgroup.com)

9 Richard Barrett  
10 LAW OFFICES OF RICHARD R. BARRETT,  
11 PLLC  
12 2086 Old Taylor Road, Suite 1011  
13 Oxford, MS 38655  
14 Telephone: (662) 380-5018  
15 Fax: (866) 430-5459  
16 [rrb@rrblawfirm.net](mailto:rrb@rrblawfirm.net)

17 J. Price Coleman  
18 COLEMAN LAW FIRM  
19 1100 Tyler Avenue, Suite 102  
20 Oxford, MS 38655  
21 Telephone: (662) 236-0047  
22 Fax: (662) 513-0072  
23 [colemanlawfirm@bellsouth.net](mailto:colemanlawfirm@bellsouth.net)

24 Dewitt M. Lovelace  
25 Alex Peet  
26 LOVELACE LAW FIRM, P.A.  
27 12870 U.S. Hwy 98 West, Suite 200  
28 Miramar Beach, FL 32550  
Telephone: (850) 837-6020  
Fax: (850) 837-4093  
[dml@lovelacelaw.com](mailto:dml@lovelacelaw.com)

David Shelton  
ATTORNEY AT LAW  
1223 Jackson Avenue East, Suite 202  
Oxford, MS 38655  
Telephone: (662) 281-1212  
Fax: (662) 281-1312  
[david@davidsheltonpllc.com](mailto:david@davidsheltonpllc.com)

Keith M. Fleischman  
Frank Karam  
Ananda N. Chaudhuri  
FLEISCHMAN LAW FIRM  
565 Fifth Avenue, 7<sup>th</sup> Floor  
New York, New York 10017  
Telephone: 212-880-9571  
[keith@fleischmanlawfirm.com](mailto:keith@fleischmanlawfirm.com)  
[frank@fkaramlaw.com](mailto:frank@fkaramlaw.com)  
[achaudhuri@fleischmanlawfirm.com](mailto:achaudhuri@fleischmanlawfirm.com)

1 Zona Jones  
2 Darren Brown  
3 PROVOST ★ UMPHREY LAW FIRM, L.L.P.  
4 P. O. Box 4905  
5 Beaumont, Texas 77704  
6 Telephone: (409) 835-6000  
7 [zjones@pulf.com](mailto:zjones@pulf.com)  
8 [dbrown@pulf.com](mailto:dbrown@pulf.com)

9 *Attorneys for Plaintiff*

10 **CERTIFICATE OF SERVICE**

11 I hereby certify that I have on November 12, 2012 filed and served through the Court's  
12 ECF system a true and correct copy of the foregoing.

13 /s/ Charles Barrett  
14 Charles Barrett (*pro hac vice*)